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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
800 Data Base Access Tariffs and)	CC Docket No. 93-129
the 800 Service Management System)	
tariff and)	
)	
Provision of 800 Services)	CC Docket No. 86-10

**OPPOSITION OF GTE TO PETITIONS FOR
RECONSIDERATION OF AT&T AND MCI**

GTE Service Corporation ("GTE"), on behalf of its affiliated domestic telephone operating companies, respectfully submits its Opposition to the Petitions for Reconsideration of the *Report and Order* in the above-captioned proceeding filed by AT&T Corporation ("AT&T") and MCI Telecommunications Corporation ("MCI").¹ Both AT&T and MCI are asking the Commission to reconsider its Order requiring a prospective one time adjustment to the local exchange carriers' ("LECs") price cap indices ("PCIs") by requiring a refund of alleged unjustified charges during the 42 month period since this proceeding was opened. GTE opposes these requests for reconsideration and submits that the Commission was correct in not ordering refunds. Even if the Commission were, nonetheless, to find refunds appropriate, the refund amount requested by AT&T is grossly overstated.

¹ 800 Data Base Access Tariffs and the 800 Service Management System Tariff and Provision of 800 Services, *Report and Order*, CC Docket Nos. 93-129 and 86-10, FCC 96-392, released Oct. 28, 1996 ("*Report and Order*").

DISCUSSION

The Commission was not required to order retroactive relief.

AT&T (at 3) and MCI (at 2) argue that by ordering only prospective relief, the Commission failed to consider the earlier established accounting order. There is no requirement, however, that the Commission necessarily order refunds just because an accounting order had been established. As the Commission has recognized, "Section 204 of the Act allows the Commission considerable discretion regarding whether to rate refunds from carriers."² The Commission also has broad discretion in establishing remedies. With the change to incentive regulation, GTE believes that the Commission cannot simply order a refund. Because a range of rates are permissible within the price cap structure, GTE believes that the Commission was correct in not ordering retroactive relief.

Neither the record nor the *Report and Order* support the retroactive relief requested.

Both AT&T and MCI argue that since the Commission has found that the LECs improperly included exogenous costs in each of the last three and one-half years, the Commission should order an additional PCI reduction. However, neither the record nor the *Report and Order* support a finding that GTE recovered revenue that it was not necessarily entitled to over the past 42 months.

² See Local Exchange Carrier Access Tariff Rate Levels, 8 FCC Rcd 6202 (1993).

Under current price cap regulation, LECs have limited flexibility to adjust their rates as long as the actual price index ("API") is equal to or less than the price cap index ("PCI").³ The amount that any given LEC's API is less than its PCI is referred to as "headroom." A LEC could increase rates within this headroom without having its API exceed its PCI. If a LEC makes an adjustment to its PCI (such as a disallowance of exogenous costs) and its API still does not exceed its PCI (*i.e.*, the LEC still has headroom), the LEC would not be required to adjust its actual rate. Because of this headroom, refunds are not necessarily required simply because exogenous costs are disallowed. GTE has had considerable headroom in some price cap baskets over the past 42 months and could have, in many cases, adjusted its PCIs without necessarily lowering rates.

In addition, under current price cap regulation, a LEC has limited flexibility to adjust rates within its pricing baskets. If the Commission had disallowed the \$6,372,301 of exogenous costs at issue in this proceeding 42 months ago, requiring GTE to adjust its PCIs, there was sufficient headroom within the price cap baskets to adjust other rates to cover this reduction. Thus, GTE still had sufficient flexibility to adjust within the price cap mechanism and would not necessarily have been precluded from collecting the revenue at issue.

MCI argues (at 3) that the refunds should be treated "in the same manner as a sharing obligation." GTE disagrees. Sharing is required if a LEC has exceeded its

³ The Commission gives a detailed explanation of this limited flexibility in the *Report and Order* at ¶¶141-142.

authorized rate of return overall. The disallowance found in the *Report and Order* was a disallowance of exogenous costs associated with 800 database which requires a reduction in the PCI. However, a PCI reduction, as discussed above, does not necessarily require rates within that basket to be reduced.


Even if refunds were appropriate, the interest requested is grossly overstated.

AT&T argues for compound interest. Even if the Commission were to find that refunds and interest are appropriate in this case, GTE believes that Commission precedent supports simple interest.⁴ Thus, AT&T's calculation further overstates the refund and must be rejected.

Accordingly, GTE urges the Commission to deny the Petitions for Reconsideration of AT&T and MCI and to rely on prospective relief as provided in the *Report and Order*.

Respectfully submitted,

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⁴ See Price Cap Reconsideration Order, 6 FCC Rcd 2637, 2688 (1991).

Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Opposition of GTE to Petitions for Reconsideration of AT&T and MCI" have been mailed by first class United States mail, postage prepaid, on December 12, 1996 to all parties on the attached list.



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